

76-3-201 Definitions -- Sentences or combination of sentences allowed -- Civil penalties.

(1) As used in this section:

(a) "Conviction" includes a:

(i) judgment of guilt; ~~and~~

(ii) plea of guilty ~~or no contest; or~~

(b) "Criminal activities" means any misdemeanor or felony offense ~~effor~~ which the defendant is convicted or any other criminal conduct for which the defendant admits responsibility to the sentencing court with or without an admission of committing the criminal conduct.

(c) "Pecuniary damages" means all special damages, but not general damages, which a person could recover against the defendant in a civil action arising out of the facts or events constituting the defendant's criminal activities and includes the money equivalent of property taken, destroyed, broken, or otherwise harmed, and losses including earnings and medical expenses.

(d) "Restitution" means full, partial, or nominal payment for pecuniary damages to a victim, and payment for expenses to a governmental entity for extradition or transportation and as further defined in Title 77, Chapter 38a, Crime Victims Restitution Act.

(e)

(i) "Victim" means any person or entity, including the Utah Office for Victims of Crime, who the court determines has suffered pecuniary damages as a result of the defendant's criminal activities.

(ii) "Victim" does not include a codefendant or accomplice.

(2) Within the limits prescribed by this chapter, a court may sentence a person convicted of an offense to any one of the following sentences or combination of them:

(a) to pay a fine;

(b) to removal or disqualification from public or private office;

(c) to probation unless otherwise specifically provided by law;

(d) to imprisonment;

(e) on or after April 27, 1992, to life in prison without parole; or

(f) to death.

(3)

(a) This chapter does not deprive a court of authority conferred by law to:

(i) forfeit property;

(ii) dissolve a corporation;

(iii) suspend or cancel a license;

(iv) permit removal of a person from office;

(v) cite for contempt; or

(vi) impose any other civil penalty.

(b) A civil penalty may be included in a sentence.

(4)

(a) When a person is convicted of criminal activity, that has resulted in pecuniary damages, in addition to any other sentence it may impose, the court shall order that the defendant make restitution to the victims, or for conduct for which the defendant has agreed to make restitution as part of a plea agreement.

(b) In determining whether restitution is appropriate, the court shall follow the criteria and procedures as provided in Title 77, Chapter 38a, Crime Victims Restitution Act.

(c) In addition to any other sentence the court may impose, the court, pursuant to the provisions of Sections 63M-7-503 and 77-38a-401, shall enter:

(i) a civil judgment for complete restitution for the full amount of expenses paid on behalf of the victim by the Utah Office for Victims of Crime; and

(ii) an order of restitution for restitution payable to the Utah Office for Victims of Crime in the same amount unless otherwise ordered by the court pursuant to Subsection (4)(d).

(d) In determining whether to order that the restitution required under Subsection (4)(c) be reduced or that the defendant be exempted from the restitution, the court shall consider the criteria under Subsections 77-38a-302(5)(c)(i) through (vi) and provide findings of its decision on the record.

(5)

(a) In addition to any other sentence the court may impose, and unless otherwise ordered by the court, the defendant shall pay restitution of governmental transportation expenses if the defendant was:

(i) transported pursuant to court order from one county to another within the state at governmental expense to resolve pending criminal charges;

(ii) charged with a felony or a class A, B, or C misdemeanor; and

(iii) convicted of a crime.

(b) The court may not order the defendant to pay restitution of governmental transportation expenses if any of the following apply:

(i) the defendant is charged with an infraction or on a subsequent failure to appear a warrant is issued for an infraction; or

(ii) the defendant was not transported pursuant to a court order.

(c)

(i) Restitution of governmental transportation expenses under Subsection (5)(a)(i) shall be calculated according to the following schedule:

(A) \$100 for up to 100 miles a defendant is transported;

(B) \$200 for 100 up to 200 miles a defendant is transported; and

(C) \$350 for 200 miles or more a defendant is transported.

(ii) The schedule of restitution under Subsection (5)(c)(i) applies to each defendant transported regardless of the number of defendants actually transported in a single trip.

(d) If a defendant has been extradited to this state under Title 77, Chapter 30, Extradition, to resolve pending criminal charges and is convicted of criminal activity in the county to which he has been returned, the court may, in addition to any other sentence it may impose, order that the defendant make restitution for costs expended by any governmental entity for the extradition.

(6)

(a) In addition to any other sentence the court may impose, and unless otherwise ordered by the court pursuant to Subsection (6)(c), the defendant shall pay restitution to the county for the cost of incarceration and costs of medical care provided to the defendant while in the county correctional facility before and after sentencing if:

(i) the defendant is convicted of criminal activity that results in incarceration in the

county correctional facility; and

(ii)

(A) the defendant is not a state prisoner housed in a county correctional facility through a contract with the Department of Corrections; or

(B) the reimbursement does not duplicate the reimbursement provided under Section 64-13e-104 if the defendant is a state probationary inmate, as defined in Section 64-13e-102, or a state parole inmate, as defined in Section 64-13e-102.

(b)

(i) The costs of incarceration under Subsection (6)(a) are the amount determined by the county correctional facility, but may not exceed the daily inmate incarceration costs and medical and transportation costs for the county correctional facility.

(ii) The costs of incarceration under Subsection (6)(a) do not include expenses incurred by the county correctional facility in providing reasonable accommodation for an inmate qualifying as an individual with a disability as defined and covered by the federal Americans with Disabilities Act of 1990, 42 U.S.C. 12101 through 12213, including medical and mental health treatment for the inmate's disability.

(c) In determining whether to order that the restitution required under this Subsection (6) be reduced or that the defendant be exempted from the restitution, the court shall consider the criteria under Subsections 77-38a-302(5)(c)(i) through (vi) and shall enter the reason for its order on the record.

(d) If on appeal the defendant is found not guilty of the criminal activity under Subsection (6)(a)(i) and that finding is final as defined in Section 76-1-304, the county shall reimburse the defendant for restitution the defendant paid for costs of incarceration under Subsection (6)(a).

~~76-3-201.1 Collection of criminal judgment accounts receivable.~~

~~(1) As used in this section:~~

~~(a) "Accounts receivable" includes unpaid fees, overpayments, fines, forfeitures, surcharges, costs, interest, penalties, restitution, (7) In addition to victims, third party claims, claims, reimbursement of a reward, and damages.~~

~~(b) "Criminal judgment accounts receivable" means any amount due the state arising from a criminal judgment for which payment has not been received by the state agency that is servicing the debt.~~

~~(2)~~

~~(a) A criminal judgment account receivable ordered by other sentence the court as a result of prosecution for a criminal offense may be collected by any means authorized by law for the collection of a civil judgment.~~

~~(b)~~

~~(i) The impose, the court may permit a defendant to pay a criminal judgment account receivable in installments.~~

~~(ii) In the district court, if the criminal judgment account receivable is paid in installments, the total amount due shall include all fines, surcharges, postjudgment interest, and fees.~~

~~(c) Upon default in the payment of a criminal judgment account receivable or upon default in the payment of any installment of that receivable, the criminal judgment account receivable~~

~~may be collected as provided in this section or Subsection 77-18-1(9) or (10), and by any means authorized by law for the collection of a civil judgment.~~

~~(3) When a defendant defaults in the payment of a criminal judgment account receivable or any installment of that receivable, the court, on motion of the prosecution, victim, or upon its own motion may:~~

~~(a) order the defendant to appear and show cause why the default should not be treated as contempt of court; or~~

~~(b) issue a warrant of arrest.~~

~~(4)~~

~~(a) Unless the defendant shows that the default was not attributable to an intentional refusal to obey the order of the court or to a failure to make a good faith effort to make the payment, the court may find that the default constitutes contempt.~~

~~(b) Upon a finding of contempt, the court may order the defendant committed until the criminal judgment account receivable, or a specified part of it, is paid.~~

~~(5) If it appears to the satisfaction of the court that the default is not contempt, the court may enter an order for any of the following or any combination of the following:~~

~~(a) require the defendant to pay the criminal judgment account receivable or a specified part of it by a date certain;~~

~~a. (b) restructure the payment schedule;~~

~~b. (c) restructure the installment amount;~~

~~(d) except as provided in Section 77-18-8, execute the original sentence of imprisonment;~~

~~(e) start the period of probation anew;~~

~~(f) except as limited by Subsection (6), convert the criminal judgment account receivable or any part of it to compensatory service;~~

~~(g) except as limited by Subsection (6), reduce or revoke the unpaid amount of the criminal judgment account receivable; or~~

~~(h) in the court, record the unpaid balance of the criminal judgment account receivable as a civil judgment and transfer the responsibility for collecting the judgment to the Office of State Debt Collection.~~

~~(2) (6) In issuing an order under this section, the court may not modify the amount of the judgment of complete restitution.~~

~~(7) Whether or not a default constitutes contempt, the court may add to the amount owed the fees established under Subsection 63A-3-502(4)(g) and postjudgment interest.~~

~~(8)~~

~~(a)~~

~~(i) If a criminal judgment account receivable is past due in a case supervised by the Department of Corrections, the judge shall determine whether to record the unpaid balance of the account receivable as a civil judgment.~~

~~(ii) If the judge records the unpaid balance of the account receivable as a civil judgment, the judge shall transfer the responsibility for collecting the judgment to the Office of State Debt Collection.~~

~~(b) If a criminal judgment account receivable in a case not supervised by the Department of~~

~~Corrections is past due, the court may, without a motion or hearing, record the unpaid balance of the criminal judgment account receivable as a civil judgment and transfer the responsibility for collecting the account receivable to the Office of State Debt Collection. (c) If a criminal judgment account receivable in a case not supervised by the Department of Corrections is more than 90 days past due, the district court shall, without a motion or hearing, record the unpaid balance of the criminal judgment account receivable as a civil judgment and transfer the responsibility for collecting the criminal judgment account receivable to the Office of State Debt Collection.~~

~~(9)~~

~~(a) When a fine, forfeiture, surcharge, cost permitted by statute, fee, or an order of restitution is imposed on a corporation or unincorporated association, the person authorized to make disbursement from the assets of the corporation or association shall pay the obligation from those assets.~~

~~(b) Failure to pay the obligation may be held to be contempt under Subsection (3).~~

~~(10) The prosecuting attorney may collect restitution on behalf of a victim.~~

~~(11)~~

~~(a) Criminal judgment accounts receivable costs are not subject to civil statutes of limitations and expire only upon payment in full appropriate pursuant to Sections 77-32a-7.~~

~~(b) This Subsection (11) applies to all criminal judgment accounts receivable not paid in full on or before May 12, 2015.~~

77-18-1 Suspension of sentence -- Pleas held in abeyance -- Probation -- Supervision -- Presentence investigation -- Standards -- Confidentiality -- Terms and conditions -- Termination, revocation, modification, or extension -- Hearings -- Electronic monitoring.

(1) On a plea of guilty or no contest entered by a defendant in conjunction with a plea in abeyance agreement, the court may hold the plea in abeyance as provided in Title 77, Chapter 2a, Pleas in Abeyance, and under the terms of the plea in abeyance agreement.

(2)

(a) On a plea of guilty, guilty with a mental illness, no contest, or conviction of any crime or offense, the court may, after imposing sentence, suspend the execution of the sentence and place the defendant on probation. The court may place the defendant:

(i) on probation under the supervision of the Department of Corrections except in cases of class C misdemeanors or infractions;

(ii) on probation with an agency of local government or with a private organization; or

(iii) on bench probation under the jurisdiction of the sentencing court.

(b)

(i) The legal custody of all probationers under the supervision of the department is with the department.

(ii) The legal custody of all probationers under the jurisdiction of the sentencing court is vested as ordered by the court.

(iii) The court has continuing jurisdiction over all probationers.

(3)

(a) The department shall establish supervision and presentence investigation standards for all

individuals referred to the department. These standards shall be based on:

- (i) the type of offense;
- (ii) the results of a risk and needs assessment;
- (iii) the demand for services;
- (iv) the availability of agency resources;
- (v) public safety; and
- (vi) other criteria established by the department to determine what level of services shall be provided.

(b) Proposed supervision and investigation standards shall be submitted to the Judicial Council and the Board of Pardons and Parole on an annual basis for review and comment prior to adoption by the department.

(c) The Judicial Council and the department shall establish procedures to implement the supervision and investigation standards.

(d) The Judicial Council and the department shall annually consider modifications to the standards based upon criteria in Subsection (3)(a) and other criteria as they consider appropriate.

(e) The Judicial Council and the department shall annually prepare an impact report and submit it to the appropriate legislative appropriations subcommittee.

(4) Notwithstanding other provisions of law, the department is not required to supervise the probation of persons convicted of class B or C misdemeanors or infractions or to conduct presentence investigation reports on class C misdemeanors or infractions. However, the department may supervise the probation of class B misdemeanants in accordance with department standards.

(5)

(a) Before the imposition of any sentence, the court may, with the concurrence of the defendant, continue the date for the imposition of sentence for a reasonable period of time for the purpose of obtaining a presentence investigation report from the department or information from other sources about the defendant.

(b) The presentence investigation report shall include:

- (i) a victim impact statement according to guidelines set in Section 77-38a-203 describing the effect of the crime on the victim and the victim's family;
- (ii) a specific statement of pecuniary damages, accompanied by a recommendation from the department regarding the payment of restitution with interest by the defendant in accordance with Title 77, Chapter 38a, Crime Victims Restitution Act;
- (iii) findings from any screening and any assessment of the offender conducted under Section 77-18-1.1;
- (iv) recommendations for treatment of the offender; and
- (v) the number of days since the commission of the offense that the offender has spent in the custody of the jail and the number of days, if any, the offender was released to a supervised release or alternative incarceration program under Section 17-22-5.5.

(c) The contents of the presentence investigation report are protected and are not available except by court order for purposes of sentencing as provided by rule of the Judicial Council or for use by the department.

(6)

(a) The department shall provide the presentence investigation report to the defendant's attorney, or the defendant if not represented by counsel, the prosecutor, and the court for review, three working days prior to sentencing. Any alleged inaccuracies in the presentence investigation report, which have not been resolved by the parties and the department prior to sentencing, shall be brought to the attention of the sentencing judge, and the judge may grant an additional 10 working days to resolve the alleged inaccuracies of the report with the department. If after 10 working days the inaccuracies cannot be resolved, the court shall make a determination of relevance and accuracy on the record.

(b) If a party fails to challenge the accuracy of the presentence investigation report at the time of sentencing, that matter shall be considered to be waived.

(7) At the time of sentence, the court shall receive any testimony, evidence, or information the defendant or the prosecuting attorney desires to present concerning the appropriate sentence. This testimony, evidence, or information shall be presented in open court on record and in the presence of the defendant.

(8) While on probation, and as a condition of probation, the court may require that the defendant:

(a) perform any or all of the following:

~~(i) pay, in one or several sums, any fine imposed at the time of being placed on probation;~~

~~(ii) pay amounts required under Title 77, Chapter 32a, Defense Costs;~~

~~(iii)~~ (i) provide for the support of others for whose support the defendant is legally liable;

~~(iv)~~ (ii) participate in available treatment programs, including any treatment program in which the defendant is currently participating, if the program is acceptable to the court;

~~(v)~~ (iii) for a felony, serve a period of time, not to exceed one year, in a county jail designated by the department, after considering any recommendation by the court as to which jail the court finds most appropriate;

~~(vi)~~ (iv) serve a term of home confinement, which may include the use of electronic monitoring;

~~(vii)~~ (v) participate in compensatory service restitution programs, including the compensatory service program provided in Section 76-6-107.1;

~~(viii)~~ (vi) pay for the costs of investigation, probation, and treatment services;

~~(ix)~~ (vii) make restitution or reparation to the victim or victims with interest in accordance with Title 77, Chapter 38a, Crime Victims Restitution Act; and

~~(x)~~ (viii) comply with other terms and conditions the court considers appropriate to ensure public safety or increase a defendant's likelihood of success on probation; and

(b) if convicted on or after May 5, 1997:

(i) complete high school classwork and obtain a high school graduation diploma, a GED certificate, or a vocational certificate at the defendant's own expense if the defendant has not received the diploma, GED certificate, or vocational certificate prior to being placed on probation; or

(ii) provide documentation of the inability to obtain one of the items listed in Subsection

(8)(b)(i) because of:

(A) a diagnosed learning disability; or

(B) other justified cause.

(9) The department shall collect and disburse the account receivable as defined by Section 76-3-

201.1, with interest and any other costs assessed under Section 64-13-21 during:

(a) the parole period and any extension of that period in accordance with Subsection 77-27-6(4); and

(b) the probation period in cases for which the court orders supervised probation and any extension of that period by the department in accordance with Subsection (10).

(10)

(a)

(i) Probation may be terminated at any time at the discretion of the court or upon completion without violation of 36 months probation in felony or class A misdemeanor cases, 12 months in cases of class B or C misdemeanors or infractions, or as allowed pursuant to Section 64-13-21 regarding earned credits.

(ii)

(A) If, upon expiration or termination of the probation period under Subsection (10)(a)(i), there remains an unpaid balance upon the account receivable as defined in Section 76-3-201.1, the court may retain jurisdiction of the case and continue the defendant on bench probation for the limited purpose of enforcing the payment of the account receivable. If the court retains jurisdiction for this limited purpose, the court may order the defendant to pay to the court the costs associated with continued probation under this Subsection (10).

(B) In accordance with Section 77-18-6, the court shall record in the registry of civil judgments any unpaid balance not already recorded and immediately transfer responsibility to collect the account to the Office of State Debt Collection.

(iii) Upon motion of the Office of State Debt Collection, prosecutor, victim, or upon its own motion, the court may require the defendant to show cause why the defendant's failure to pay should not be treated as contempt of court.

(b)

(i) The department shall notify the sentencing court, the Office of State Debt Collection, and the prosecuting attorney in writing in advance in all cases when termination of supervised probation is being requested by the department or will occur by law.

(ii) The notification shall include a probation progress report and complete report of details on outstanding accounts receivable.

(11)

(a)

(i) Any time served by a probationer outside of confinement after having been charged with a probation violation and prior to a hearing to revoke probation does not constitute service of time toward the total probation term unless the probationer is exonerated at a hearing to revoke the probation.

(ii) Any time served in confinement awaiting a hearing or decision concerning revocation of probation does not constitute service of time toward the total probation term unless the probationer is exonerated at the hearing.

(iii) Any time served in confinement awaiting a hearing or decision concerning revocation of probation constitutes service of time toward a term of incarceration imposed as a result of the revocation of probation.

(b) The running of the probation period is tolled upon the filing of a violation report with the

356 court alleging a violation of the terms and conditions of probation or upon the issuance of an
357 order to show cause or warrant by the court.

358 (12)

359 (a)

360 (i) Probation may not be modified or extended except upon waiver of a hearing by the
361 probationer or upon a hearing and a finding in court that the probationer has violated the
362 conditions of probation.

363 (ii) Probation may not be revoked except upon a hearing in court and a finding that the
364 conditions of probation have been violated.

365 (b)

366 (i) Upon the filing of an affidavit alleging with particularity facts asserted to constitute
367 violation of the conditions of probation, the court that authorized probation shall
368 determine if the affidavit establishes probable cause to believe that revocation,
369 modification, or extension of probation is justified.

370 (ii) If the court determines there is probable cause, it shall cause to be served on the
371 defendant a warrant for the defendant's arrest or a copy of the affidavit and an order to
372 show cause why the defendant's probation should not be revoked, modified, or extended.

373 (c)

374 (i) The order to show cause shall specify a time and place for the hearing and shall be
375 served upon the defendant at least five days prior to the hearing.

376 (ii) The defendant shall show good cause for a continuance.

377 (iii) The order to show cause shall inform the defendant of a right to be represented by
378 counsel at the hearing and to have counsel appointed if the defendant is indigent.

379 (iv) The order shall also inform the defendant of a right to present evidence.

380 (d)

381 (i) At the hearing, the defendant shall admit or deny the allegations of the affidavit.

382 (ii) If the defendant denies the allegations of the affidavit, the prosecuting attorney shall
383 present evidence on the allegations.

384 (iii) The persons who have given adverse information on which the allegations are based
385 shall be presented as witnesses subject to questioning by the defendant unless the court
386 for good cause otherwise orders.

387 (iv) The defendant may call witnesses, appear and speak in the defendant's own behalf,
388 and present evidence.

389 (e)

390 (i) After the hearing the court shall make findings of fact.

391 (ii) Upon a finding that the defendant violated the conditions of probation, the court may
392 order the probation revoked, modified, continued, or that the entire probation term
393 commence anew.

394 (iii) If a period of incarceration is imposed for a violation, the defendant shall be sentenced
395 within the guidelines established by the Utah Sentencing Commission pursuant to
396 Subsection 63M-7-404(4), unless the judge determines that:

397 (A) the defendant needs substance abuse or mental health treatment, as determined by
398 a risk and needs assessment, that warrants treatment services that are immediately
399 available in the community; or

(B) the sentence previously imposed shall be executed.

(iv) If the defendant had, prior to the imposition of a term of incarceration or the execution of the previously imposed sentence under this Subsection (12), served time in jail as a condition of probation or due to a violation of probation under Subsection 77-18-1(12)(e)(iii), the time the probationer served in jail constitutes service of time toward the sentence previously imposed.

(13) The court may order the defendant to commit himself or herself to the custody of the Division of Substance Abuse and Mental Health for treatment at the Utah State Hospital as a condition of probation or stay of sentence, only after the superintendent of the Utah State Hospital or the superintendent's designee has certified to the court that:

(a) the defendant is appropriate for and can benefit from treatment at the state hospital;

(b) treatment space at the hospital is available for the defendant; and

(c) persons described in Subsection 62A-15-610(2)(g) are receiving priority for treatment over the defendants described in this Subsection (13).

(14) Presentence investigation reports are classified protected in accordance with Title 63G, Chapter 2, Government Records Access and Management Act. Notwithstanding Sections 63G-2-403 and 63G-2-404, the State Records Committee may not order the disclosure of a presentence investigation report. Except for disclosure at the time of sentencing pursuant to this section, the department may disclose the presentence investigation only when:

(a) ordered by the court pursuant to Subsection 63G-2-202(7);

(b) requested by a law enforcement agency or other agency approved by the department for purposes of supervision, confinement, and treatment of the offender;

(c) requested by the Board of Pardons and Parole;

(d) requested by the subject of the presentence investigation report or the subject's authorized representative; or

(e) requested by the victim of the crime discussed in the presentence investigation report or the victim's authorized representative, provided that the disclosure to the victim shall include only information relating to statements or materials provided by the victim, to the circumstances of the crime including statements by the defendant, or to the impact of the crime on the victim or the victim's household.

(15)

(a) The court shall consider home confinement as a condition of probation under the supervision of the department, except as provided in Sections 76-3-406 and 76-5-406.5.

(b) The department shall establish procedures and standards for home confinement, including electronic monitoring, for all individuals referred to the department in accordance with Subsection (16).

(16)

(a) If the court places the defendant on probation under this section, it may order the defendant to participate in home confinement through the use of electronic monitoring as described in this section until further order of the court.

(b) The electronic monitoring shall alert the department and the appropriate law enforcement unit of the defendant's whereabouts.

(c) The electronic monitoring device shall be used under conditions which require:

(i) the defendant to wear an electronic monitoring device at all times; and

- (ii) that a device be placed in the home of the defendant, so that the defendant's compliance with the court's order may be monitored.
- (d) If a court orders a defendant to participate in home confinement through electronic monitoring as a condition of probation under this section, it shall:
- (i) place the defendant on probation under the supervision of the Department of Corrections;
 - (ii) order the department to place an electronic monitoring device on the defendant and install electronic monitoring equipment in the residence of the defendant; and
 - (iii) order the defendant to pay the costs associated with home confinement to the department or the program provider.
- (e) The department shall pay the costs of home confinement through electronic monitoring only for those persons who have been determined to be indigent by the court.
- (f) The department may provide the electronic monitoring described in this section either directly or by contract with a private provider.

Chapter-32a Criminal Accounts Receivable and Defense Costs

77-32a-1 ~~Convicted~~ Definitions

As used in this chapter:

(a) "Criminal judgment accounts receivable" means any amount owed by a criminal defendant ~~may be required to pay~~ arising from a criminal judgment which has not been paid. This includes fines, surcharges, costs, interest, and restitution.

(b) "Accounts receivable" includes unpaid fees, overpayments, fines, forfeitures, surcharges, costs, interest, penalties, restitution to victims, third party claims, claims, reimbursement of a reward, and damages.

(c) "Delinquent" means an account or installment payment that is overdue by more than 28 but less than ninety days.

(d) Default" means an account receivable that is overdue by at least ninety days.

77-32a-2 Creation of Criminal Judgment Account Receivable

(1) At the time of sentencing, acceptance of a plea in abeyance, the court shall establish the criminal accounts receivable, as determined by 76-3-201 including all amounts then owing, including as applicable, fines, fees, surcharges, costs, restitution and interest.

(2) Having created the account receivable, the Court:

- a. Shall in the case of felonies where a prison sentence is imposed and not suspended, enter any unpaid criminal judgment account receivable as a civil judgment and transfer the responsibility for collecting the judgement to the Office of State Debt Collection;

b. May, in other cases, permit a defendant to pay the criminal judgment accounts receivable by a date certain or in installments;

i. The court may modify the amount and number of such delayed payments, as justice requires, at any time prior to the time for default as outlined in 77-32a-3(2).

c. In ~~a criminal action~~ the district court, such delayed payment shall include post judgment interest;

d. May, in other cases, where the court finds that collection of the account by the court would not be feasible, enter any unpaid criminal judgment account receivable as a civil judgment and transfer the responsibility for collecting the judgement to the Office of State Debt Collection;

e. A court allowing installment payments does not limit the ability of a judgment creditor to pursue collection by any means allowable by law.

(3) If the court makes restitution or other financial decisions at a time after sentencing which increase the total amounts owed in a case, the criminal accounts receivable balance will be adjusted to include those new amounts.

77-32a-3 Past Due Accounts or Payments-Authority to Send to Office of State Debt, independent of Probation Status

(1) If a criminal judgment account receivable retained by the court becomes more than 30 days past due, the court may, without a motion or a hearing record the unpaid balance of the account receivable as a civil judgment and transfer the responsibility for collecting the judgment to the Office of State Debt Collection.

(2) If a criminal judgment account receivable retained by the court is more than 90 days past due, the district court shall, without a motion or hearing, record the unpaid balance of the criminal judgment account receivable as a civil judgment and transfer the responsibility for collecting the criminal judgment account receivable to the Office of State Debt Collection.

77-32a-4 Delinquency and Default as Contempt of Court

(3) If a criminal judgment accounts receivable, or any installment thereof, becomes delinquent, the court, upon motion of the prosecutor, a judgment creditor or upon its own motion may order the defendant to appear and show cause why the delinquency should not be treated as contempt of court, as provided in 78-6-317.

(4) After the hearing, if it appears to the satisfaction of the court that the default is not contempt, the court may enter an order for any of the following or any combination of the following:

- a. require ~~a convicted~~the defendant to pay ~~costs~~.
the criminal judgment account receivable or a specified part of it by a
date certain;
- b. restructure the payment schedule;
- c. restructure the installment amount;
- d. except as limited by Subsection (4), satisfy the criminal judgment
account receivable or any part of it with proof of compensatory service;
at a rate of credit at not less than ten dollars for each hour of
compensatory service;
- e. except as limited by Subsection (4), reduce or revoke the unpaid
amount of the criminal judgment account receivable; or
- f. record the unpaid balance of the criminal judgment account receivable
as a civil judgment and transfer the responsibility for collecting the
judgment to the Office of State Debt Collection; and
- g. add to the total accounts receivable postjudgment interest, if that had
not previously been ordered or included.

(5) If the court determines that the nonpayment does constitute contempt it shall
address such contempt as authorized by 78B-6-317.

(6) In issuing an order under this section, the court may not modify the amount of
the judgment of complete restitution.

(7) If the Defendant is a corporation or unincorporated association, any contempt
proceeding authorized by this section shall cite the person authorized to make
disbursement from the assets of the corporation or association.

77-32a-5 Accounts with balances at Termination of Probation

(1) When a defendant successfully terminates probation and has a non-
delinquent criminal judgment receivable account with an outstanding balance,
the court shall retain that account and allow the defendant to continue paying
the account off.

(2) Should any such balance become delinquent or in default, the court shall take
appropriate action pursuant to 77-32a-3 or 4.

77-32a-6 Transfer of Collection Responsibility does not effect Probation.

1) If a court transfers a criminal accounts receivable to the Office of State Debt
Collection, that includes an amount of court ordered restitution, the payment
which is a term of probation pursuant to 77-18-1(8), that transfer does not effect
the court's ability to monitor the payment as a condition of probation.

77-32a-~~77-32a-27~~ Costs -- What constitute.

Costs shall be limited to expenses specially incurred by the state or any political
subdivision in investigating, searching for, apprehending, and prosecuting the
defendant, including attorney fees of counsel assigned to represent the defendant,
~~interpreter fees,~~ and investigators' fees. Costs cannot include expenses inherent in

providing a constitutionally guaranteed trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law. Costs cannot include attorneys' fees for prosecuting attorneys.

77-32a-38 Ability to pay considered.

The court shall not include in the judgment a sentence that a defendant pay costs unless the defendant is or will be able to pay them. In determining the amount ~~and method of payment~~ of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose and that restitution be the first priority.

77-32a-49 Petition for remission of payment of costs.

A defendant who has been ~~sentenced~~ordered to pay costs and who is not ~~in contumacious default~~delinquent in the payment thereof may at any time petition the court which sentenced him ~~for remission of the payment of costs or of~~to reduce any unpaid ~~portion thereof~~amount of those costs. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or his immediate family, the court may remit all or part of the amount due in costs, or modify the method of payment under Section 77-32a-~~54~~.

~~**77-32a-5 Time and method of payment.**~~

~~When a defendant is sentenced to pay costs, the court may grant permission for payment to be made within a specified period of time or in specified installments. If no such permission is included in the sentence the costs shall be payable forthwith.~~

~~**77-32a-6 Payment as condition of probation or suspended sentence.**~~

~~When a defendant sentenced to pay costs is also placed on probation or imposition or execution of sentence is suspended, the court may make payment of costs a condition of probation or suspension of sentence.~~

~~**77-32a-7 Default in payment as contempt—Order to show cause—Warrant of arrest.**~~

~~When a defendant sentenced to pay costs defaults in the payment thereof or of any installment, the court on motion of the attorney general or the county attorney or upon its own motion may require him to show cause why his default should not be treated as contempt of court, and may issue an order to show cause or a warrant of arrest for his appearance.~~

~~**77-32a-8 Default in payment as contempt—What constitutes contempt—Imprisonment.**~~

~~Unless the defendant shows that his default was not attributable to an intentional refusal to obey the order of the court or to a failure on his part to make a good faith effort to make the payment, the court may find that his default constitutes contempt and may order him committed until the costs or a specified part thereof, are paid.~~

~~**77-32a-9 Costs imposed on corporation or association — Duty to pay — Contempt.**~~

~~When costs are imposed on a corporation or unincorporated association, it is the duty of the person authorized to make disbursement from the assets of the corporation or association to pay the costs from those assets, and his failure to do so may be held to be contempt unless he makes the showing required in Section 77-32a-8 of this act.~~

~~**77-32a-10 Imprisonment for contempt — Limitations.**~~

~~The term of imprisonment for contempt for nonpayment of costs shall be set forth in the commitment order, and shall not exceed one day for each \$25 of the costs, 30 days if the costs were imposed upon conviction of a misdemeanor, or six months in the case of a felony, whichever is the shorter period. A person committed for nonpayment of costs shall be given credit toward payment for each day of imprisonment at the rate specified in the commitment order.~~

~~**77-32a-11 Default not constituting contempt — Relief allowed.**~~

~~If it appears to the satisfaction of the court that the default in the payment of costs is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount thereof or of each installment or revoking the costs or the unpaid portion thereof in whole or in part.~~

~~**77-32a-12 Collection of payment in default — Execution.**~~

~~A default in the payment of costs or any installment thereof may be collected by any means authorized by law for the enforcement of a judgment. The levy of execution for the collection of costs shall not discharge a defendant committed to imprisonment for contempt until the amount of the costs has actually been collected.~~

~~**77-32a-13 Docketing judgment for costs.**~~

~~A judgment that the defendant pay costs may be docketed in the same manner as a judgment in a civil action.~~

~~**77-32a-14 Verified statement of time and expenses of counsel for indigent defendants.**~~

The court may require a verified statement of time and expenses from appointed counsel or the nonprofit legal aid or other association providing counsel to convicted indigent defendants in order to establish the costs, if any, which will be included in the judgment.

77-38a-102 Definitions.

As used in this chapter:

(1) "Conviction" includes a:

(a) judgment of guilt;

(b) a plea of guilty; or

(c) a plea of no contest.

(2) "Criminal activities" means:

_(a) any misdemeanor or felony offense of which the defendant is convicted; or

_(b) any other criminal conduct for which the defendant admits responsibility to the sentencing court with or without an admission of committing the criminal conduct.

(3) "Department" means the Department of Corrections.

(4) "Diversion" means suspending criminal proceedings prior to conviction on the condition that a defendant agree to participate in a rehabilitation program, make restitution to the victim, or fulfill some other condition.

(5) "Party" means the prosecutor, defendant, or department involved in a prosecution.

(6) "Pecuniary damages" means all demonstrable economic injury, whether or not yet incurred, ~~including those~~ which a person could recover in a civil action arising out of the facts or events constituting the defendant's criminal activities and includes the fair market value of property taken, destroyed, broken, or otherwise harmed, and losses including lost earnings, ~~including those and other travel expenses reasonably incurred as a result of participation in criminal proceedings, and medical and other~~ and medical expenses, but excludes punitive or exemplary damages and pain and suffering.

(7) "Plea agreement" means an agreement entered between the prosecution and defendant setting forth the special terms and conditions and criminal charges upon which the defendant will enter a plea of guilty or no contest.

(8) "Plea disposition" means an agreement entered into between the prosecution and defendant including diversion, plea agreement, plea in abeyance agreement, or any agreement by which the defendant may enter a plea in any other jurisdiction or where charges are dismissed without a plea.

(9) "Plea in abeyance" means an order by a court, upon motion of the prosecution and the defendant, accepting a plea of guilty or of no contest from the defendant but not, at that time, entering judgment of conviction against him nor imposing sentence upon him on condition that he comply with specific conditions as set forth in a plea in abeyance agreement.

(10) "Plea in abeyance agreement" means an agreement entered into between the prosecution and the defendant setting forth the specific terms and conditions upon which, following acceptance of the agreement by the court, a plea may be held in abeyance.

(11) "Restitution" means full, partial, or nominal payment for pecuniary damages to a victim, including prejudgment interest, the accrual of interest from the time of sentencing, insured damages, reimbursement for payment of a reward, and payment for expenses to a governmental entity for extradition or transportation and as may be further defined by law.

(12)

(a) "Reward" means a sum of money:

(i) offered to the public for information leading to the arrest and conviction of an offender; and

(ii) that has been paid to a person or persons who provide this information, except that the person receiving the payment may not be a codefendant, an accomplice, or a bounty hunter.

(b) "Reward" does not include any amount paid in excess of the sum offered to the public.

(13) "Screening" means the process used by a prosecuting attorney to terminate investigative

action, proceed with prosecution, move to dismiss a prosecution that has been commenced, or cause a prosecution to be diverted.

(14)

(a) "Victim" means any person or entity, including the Utah Office for Victims of Crime, who the court determines has suffered pecuniary damages as a result of the defendant's criminal activities.

(b) "Victim" may not include a codefendant or accomplice.

77-38a-301. Restitution -- Convicted defendant may be required to pay.-

 In a criminal action, the court may require a defendant who enters into a plea disposition or is convicted ~~defendant~~ to make restitution.-

77-38a-302 Restitution criteria.

(1) When a defendant enters into a plea disposition or is convicted of criminal activity that has resulted in pecuniary damages, in addition to any other sentence or term of a plea in abeyance it may impose, the court shall order that the defendant make restitution to victims of crime as provided in this chapter, or for conduct for which the defendant has agreed to make restitution as part of a plea disposition. For purposes of restitution, a victim has the meaning as defined in Subsection 77-38a-102(14) and in determining whether restitution is appropriate, the court shall follow the criteria and procedures as provided in Subsections (2) through (5).

(2) In determining restitution, the court shall determine complete restitution and court-ordered restitution.

(a) "Complete restitution" means restitution necessary to compensate a victim for all losses caused by the defendant.

(b) "Court-ordered restitution" means the restitution the court having criminal jurisdiction orders the defendant to pay as a part of the criminal sentence at the time of sentencing or within one year after sentencing.

(c) Complete restitution and court-ordered restitution shall be determined as provided in Subsection (5).

(3) If the court determines that restitution is appropriate or inappropriate under this part, the court shall make the reasons for the decision part of the court record.

(4) If the defendant objects to the imposition, amount, or distribution of the restitution, the court shall allow the defendant a full hearing on the issue.

(5)

(a) For the purpose of determining restitution for an offense, the offense shall include any criminal conduct admitted by the defendant to the sentencing court -or to which the defendant agrees to pay restitution. A victim of an offense that involves as an element a scheme, a conspiracy, or a pattern of criminal activity, includes any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern.

(b) In determining the monetary sum and other conditions for complete restitution, the court shall consider all relevant facts, including:

- (i) the cost of the damage or loss if the offense resulted in damage to or loss or destruction of property of a victim of the offense;
- (ii) the cost of necessary medical and related professional services and devices relating to physical or mental health care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;
- (iii) the cost of necessary physical and occupational therapy and rehabilitation;
- (iv) the income lost by the victim as a result of the offense if the offense resulted in bodily injury to a victim;
- (v) up to five days of the individual victim's ~~reasonable~~ determinable wages that are lost due to theft of or damage to tools or equipment items of a trade that were owned by the victim and were essential to the victim's current employment at the time of the offense; and
- (vi) the cost of necessary funeral and related services if the offense resulted in the death of a victim.
- (c) In determining the monetary sum and other conditions for court-ordered restitution, the court shall consider:
- (i) the factors listed in Subsections (5)(a) and (b);
- (ii) the financial resources of the defendant, as disclosed in the financial declaration described in Section 77-38a-204;
- (iii) the burden that payment of restitution will impose, with regard to the other obligations of the defendant;
- (iv) the ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court;
- (v) the rehabilitative effect on the defendant of the payment of restitution and the method of payment; and
- (vi) other circumstances that the court determines may make restitution inappropriate.
- (d)
- (i) ~~The prosecuting agency~~ Except as provided in Subsection (5)(d)(ii), the court shall ~~submit all requests for~~ determine complete restitution and court-ordered restitution ~~to the court, and shall make all restitution orders~~ at the time of sentencing if feasible, otherwise within one year after sentencing.
- ~~(ii) If a defendant is placed on probation pursuant to Section 77-18-1:~~
- ~~(A) the court shall determine complete restitution and court ordered restitution; and~~
- ~~(B) the time period for determination of complete restitution and court ordered restitution may be extended by the court upon a finding of good cause, but may not exceed the period of the probation term served by the defendant.~~
- ~~(iii) If the defendant is committed to prison:~~
- ~~(A) any~~ (ii) Any pecuniary damages that have not been determined by the court within one year after sentencing may be determined by the Board of Pardons and Parole; ~~and.~~
- ~~(B) the~~ The Board of Pardons and Parole may, within one year after sentencing, refer an order of judgment and commitment back to the court for determination of restitution.

78-6-317 Willful failure to Pay Criminal judgment Accounts Receivable

(1) If a criminal judgment accounts receivable has become delinquent as defined in 77-32a-1, the court, by motion of the prosecutor, a judgment creditor, the State Office of Debt Collection, or on its own motion, may order the defendant to appear and show cause why the delinquency should not be treated as contempt of court, as provided in this section.

(2)

a. The moving party, or a court clerk shall provide a declaration outlining the nature of the debt and the delinquency.

b. Upon receipt of that declaration, the Court shall set the matter for a hearing, and mail notice to the defendant's last known address, and by any other means the court finds likely to provide defendant notice of the hearing.

i. If it appears to the court that defendant is not likely to appear at the hearing, the court may issue an arrest warrant with a bail amount reasonably likely to guarantee the defendant's appearance.

ii. If the defendant is a corporation or an unincorporated association, the court shall cite the person authorized to make disbursement from the assets of the corporation or association to appear to answer for the alleged contempt.

(3) At the hearing, the defendant is entitled to be represented by counsel, and if the court is considering a period of incarceration as a potential sanction, appointed counsel if the defendant is indigent.

(4) To find the defendant in contempt, the court must find by a preponderance of the evidence that the defendant:

a. was aware of the obligation to pay the criminal judgment accounts receivable;

b. had the capacity to

i. pay the criminal accounts receivable in the manner ordered by the court; or

ii. seek an extension of such payments before they became delinquent; and

c. did not make a good faith effort to make the payments or seek such extension.

(5) If the Court finds the defendant in contempt for such non payment, the court may impose the sanctions for contempt as provided in 78B-6-310, subject to the limitations in subsections (6) through (8).

(6) If the court imposes a jail sanction for the contempt, the number of jail days cannot exceed one day for each 100.00 dollars of the amount the court finds was contemptuously unpaid, up to a maximum of five days for contempt arising from a class b misdemeanor or lesser offense, and 30 days for a class A misdemeanor or more serious offense.

824 (7) Any jail sanction imposed for contempt under this section shall serve to
825 satisfy the criminal judgment account receivable, at 100.00 dollars for each
826 day served, with the exception of Crime Victim Restitution, as defined in 77-
827 38a-1 et seq.
828 (8) Any financial penalty authorized by 78B-6-310, and ordered by the court shall
829 only become due after the satisfaction of the original criminal account
830 receivable.
831 (9) The order of the court finding the defendant in contempt and ordering
832 sanctions is a final appealable order.
833